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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,627	01/23/2001	Andrew J. Pennella	PC11666ABTC	3483
7590	03/15/2006		EXAMINER	
McCormick Paulding & Huber LLP CityPlace II, 185 Asylum Street Hartford, CT 06103-3402			FLORES SANCHEZ, OMAR	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/767,627	PENNELLA ET AL.
	Examiner	Art Unit
	Omar Flores-Sánchez	3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 05 July 2005.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-12, 14 and 15 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-12, 14 and 15 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

1. This action is in response to applicant's amendment received on 07/05/05.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-6, 9 and 11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 31, 32, 33, 43-45 and 46 of U.S. Patent No. 6,550,141 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because: It is clear that all the elements of claim 1 of the instant invention are to be found claims 31-33 and 46 of the patent claims. The differences between claim 1 of the application and claims 31-33 and 46 of the patent lies in the fact that the patent include many more features and is thus much more specific (for example, the patent claims require thermoplastic guard elements). Thus the invention of claims 31-33 and 46 is in effect a "species" of the "generic" invention of claim 1. It has been held that the generic invention is

“anticipated” by the “species”. See *In re Goodman*, 29 USPQ2D 2010 (Fed. Cir. 1993). Since claim 1 is anticipated by claims 31-33 and 46, it is not patentably distinct from claims 31-33 and 46.

Similarities between application # 09/767, 627 and pat. # 6,550,141 B1	
Application # 09/767, 627	Pat. # 6,550,141 B1
Claim 1: a body, one or more blades, a series of guard ribs, guard ribs integrally formed, and a leading edge.	Claim 31: a blade support, a plurality of blades, a plurality of spaced, and thermoplastic guard elements.  Claim 32: guard elements integrally formed.  Claim 33; a leading edge.  Claim 46; at least one guard/blade support element integrally formed.
Claims 2 and 3: guard ribs are spaced apart from each other.	Claim 45: a plurality of spaced apart guard/blade support elements.
Claims 4 and 5: guard ribs overlie the cutting edge of at least one of said cutting blade.	Claim 31: covering a portion of the sharp edge.  Claim 43; covering an associated portion of the exposed sharp edge.
Claim 6: a guard bar.	Claim 43: at least one thermoplastic guard/blade support elements.
Claim 9: a cap.	Claim 43: a cap.
Claim 11: one or more cutting blades are	Claim 44: a plurality of parallel spaced apart

substantially parallel to one another.	substantially flat blades.
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***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 6, 9 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6, 9 and 11 recite the limitation "said plastic body". There is insufficient antecedent basis for this limitation in the claim.

Claim 11, it is not clear what "one or more cutting blades are substantially parallel to one another" encompass. One cutting blade can't be parallel to another, when only one blade is claimed.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-5, 11, 12, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by H. F. Shannon (2,560,004).

Shannon discloses the invention including:

- a. Claim 1; a body 23 including a leading edge 29 and a trailing edge 25, a series of guard ribs 31 integrally formed with the body and cover at least a portion of the cutting edge (see Fig. 9), cutting blades 28 having cutting edges coupled (by lugs 27) to the body and a center guard rib (see Fig. 2). Shannon teaches the guard ribs extending from the body adjacent the leading edge to the body adjacent the trailing edge such the guard ribs are continuous with the body (see Fig. 9).
- b. Claims 2 and 3; the guard ribs are evenly spaced from one another (see Fig. 2).
- c. Claim 4; the guard ribs overlie the cutting edge of at least one of the cutting edges (see Fig. 9).
- d. Claim 5; the guard ribs project beyond the cutting edge of at least one of the cutting blades (see Fig. 9).
- e. Claim 11, as best understood; the cutting blade is substantially parallel to the leading edge and the trailing edge (see Fig. 3).
- f. Claim 12; the guard ribs are substantially perpendicular to the cutting blade (see Fig. 3 and 9).
- g. Claim 14; the guard ribs have uniform dimensions.
- h. Claim 15; the guard ribs comprise a center guard rib and at least one pair of guard ribs on opposing sides (see Fig. 2).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-7, 9-12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Althaus (5,359,774) in view of H. F. Shannon (2,560,004).

Althaus'774 discloses the invention substantially as claimed including:

- a. Claim 1; a body 1 including a leading edge and a trailing edge, a series of guard ribs (28 and 29) integrally formed with the body, cutting blades 5 having cutting edges 9.
- b. Claims 2 and 3; the guard ribs are evenly spaced from one another (see Fig. 1).
- c. Claim 6; a guard bar 10 and a body made of plastic (see Abstract).
- d. Claim 7; a series of depressions 30.
- e. Claim 9; a cap 4.
- f. Claim 10; a lubricating strip 22.
- i. Claim 11, as best understood; the cutting blades are substantially parallel to one another and leading and trailing edges (see Fig. 1).
- g. Claim 12; the guard ribs are substantially perpendicular to the cutting blade (see Fig. 5).
- h. Claim 14; the guard ribs have uniform dimensions.
- i. Claim 15; the guard ribs comprise a center guard rib and at least one pair of guard ribs on opposing sides (see Fig. 1).

Althaus'774 does not show the guard ribs extending from the body adjacent the leading edge to the body adjacent the trailing edge such the guard ribs are continuous with the body. However, regarding claim 1 and 4, Shannon teaches the use of the guard ribs 31 extending from the body adjacent the leading edge to the body adjacent the trailing edge such the guard ribs are continuous with the body for the purpose of providing better cutting action. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the guard ribs of Althaus'774 by providing guard ribs extending from the body adjacent the leading edge to the body adjacent the trailing edge such the guard ribs are continuous with the body as taught by Shannon in order to obtain a device that provides better cutting action.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Althaus (5,359,774) in view of H. F. Shannon (2,560,004) as applied to claims 1, 6 and 7 above, and further in view of King et al. (6167625 B1).

The modified device of Althaus'774 discloses the invention substantially as claimed except for a series of depressions and projections. However, King et al. teach the use of a series of depressions and projections (see Fig.1) for the purpose of gradually increasing the tension on the skin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the guard bar of Althaus'774 by providing the series of depressions and projections as taught by King et al. in order to obtain a guard bar that gradually increase the tension on the skin.

***Response to Arguments***

9. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. Applicant argues that the combination Althaus'812 and Althaus'774 does not show the guard ribs that extend from the body adjacent the leading edge to the body adjacent the trailing edge such the guard ribs are continuous with the body. However, Shannon shows the guard ribs extending from the body adjacent the leading edge to the body adjacent the trailing edge such the guard ribs are continuous with the body (see Fig. 9).

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Padro, Beard, Testi, Hightower, Burns, Ferrara, Laszlo, Michelson and Coffin are cited to show related device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Omar Flores-Sánchez whose telephone number is 571-272-4507. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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